

City of Springfield
Work Session Meeting

MINUTES OF THE WORK SESSION MEETING OF
THE SPRINGFIELD CITY COUNCIL HELD
MONDAY, APRIL 12, 2004.

The City of Springfield council met in a work session in the Library Meeting Room, 225 Fifth Street, Springfield, Oregon, on Monday, April 12, 2004 at 5:30 p.m., with Mayor Leiken presiding.

ATTENDANCE

Present were Mayor Leiken and Councilors Lundberg, Fitch, Ballew, Ralston, and Woodrow. Also present were City Manager Mike Kelly, Assistant City Manager Cynthia Pappas, City Attorney Joe Leahy, City Recorder Amy Sowa and members of the staff.

1. Joint Meeting with the Library Board.

Mayor Leiken welcomed the Library Board members and asked them to introduce themselves. Board members attending were Board Chair Jonna VanDeWalker and Board members Howard Coffin, Mark Danburg-Wyld, Ruth Haberman and Dorothy Velasco. Each board member gave a brief history of their tenure on the Library Board.

Library Director Bob Russell said that each board member would discuss a different item on the agenda.

Ms. VanDeWalker gave an overview of the Library Board. She discussed the number of board members, the qualifications to become a board member and how often the board meets. The main purpose of the Library Board is to provide citizen input to the library staff and Mr. Russell. The Board has a variety of members and provides rounded views to the library. The views assist in offering suggestions of ways to make the library a better working operation in the city. She said the board has had roles in assisting with some of the policies by bringing suggestions from the community. At one time, the board was the trustee for the Library's Gift and Memorial Account, but those funds are now in the city's special reserves. The board receives monthly updates from the Friends of the Library and the Library Foundation.

Mr. Russell introduced Springfield Library staff Jenny Peterson who manages the Adult Services Program, Barbara Thompson one of the city's Children's Librarians, Cyndy Dustrude a library technician and board meeting minute taker, Debbie Steinman who is the Support Services Manager, and Judy Harold who is the Youth Services Manager.

Ms. Velasco discussed the current issues the board has discussed over the last few months, which include issues with the Patriot Act. She explained the issues for the library with the Patriot Act regarding library patrons' records. The City Attorney's office has made recommendations and Mr. Russell and library staff have worked to write and adopt these policies. The first is a Privacy Policy, which Mr. Russell distributed to council members. This Privacy Policy has been approved by the board. The second privacy issue is regarding the procedure for handling law enforcement visits to the library. The board will consider the final draft of that policy at its May meeting.

Ms. Velasco said the board has been fund raising to provide free library cards to low-income families that have students in the Springfield School District, but live outside the city limits. Sometimes the cost of the cards, which is \$60, is too much for these families. This program helps families in need to be able to use the library. Since 1995 the program has issued over 250 scholarships. She discussed the fundraising process and the drop in those funds this past year. The board is looking at other ways to raise money for these scholarships.

Ms. Velasco said another project initiated this year was a mini-library in the McKenzie Willamette Medical Center. The idea came from Howard Coffin and the Friends of the Library. The Friends of the Library provided a number of paperback books that could be used at the hospital. Ms. Velasco arranged with the hospital to have a book cart and book shelves in the family waiting rooms at the hospital. Patients and their families can check-out the books and return them to the hospital or the library. The collection at this mini-library has grown as hospital employees often donate their own books. This is a nice outreach for the library without costing much. The Library Board periodically reviews progress on the library long-range plan that was put together a few years ago. This June, Mr. Russell will present a review of the five-year progress report on that plan.

Councilor Fitch asked about the privacy policy and if there was any concern regarding access to inappropriate websites by children.

Mr. Russell said this policy refers to requests from outside agencies as to who has been accessing certain websites. This policy states the library would only give this information if there is a properly executed court order.

Councilor Ralston said other libraries in other cities have been told to restrict people from visiting certain websites. He has heard those libraries are not going to restrict access for children. He asked what the Springfield Library planned to do regarding access by children.

Mr. Russell said the computers in the young adult and children's areas are filtered. Staff reminds parents that the filters are not perfect and they cannot guarantee the children will not access an inappropriate website. The library does try to get the best filtering system they can. Each community in Oregon has put together their own policy that works best for them and Springfield has chosen to use the filters.

Councilor Ralston asked if children could access the same computers the adults access.

Mr. Russell said library staff discourages children from using the computers in the adult area, but they do not prohibit their use. Those computers are in a fairly visible area and staff can intervene if they notice a child on an inappropriate site.

Ms. Haberman discussed some of the concerns about library funding and the budget. She noted there has been a growth of technology in the library, yet the backbone of most libraries tends to be book, audio-visual and periodical collections. Sadly for the Springfield Public Library there has been a steady decline in library funding and services over the past fifteen years. Registered

borrowers and circulation have increased, yet there has been a twenty-five percent decrease in staffing and open hours of the library. The book budget is less than it was in 1988. In 1988 the average price of a book was about \$15 and it is now about \$25.

Ms. Haberman said the Friends group provides money for a book lease program that allows the purchase of eight to ten books per month. This means there is no allowance for multiple copies to answer the demand for popular current fiction. The library struggles to do more with less. Materials donated by community members assist with the audio and visual collections. She discussed the importance of having a balanced collection especially in the non-fiction area. The Springfield librarians are greatly challenged to select titles and materials within a budget that was reduced by more than forty percent over the last three years. The library has posted a wish list at Amazon.com where patrons can help fill a shopping basket with library designated titles.

Ms. Haberman discussed the difficulties of not having a stable budget for these books and for replacement books. She discussed the reference department and the lack of technology and material for that department. She said the library was not able to purchase the paper edition of the encyclopedia for the past several years and now has online access to the encyclopedia for the cost of \$1000 a year, but there is no remote access for patrons from their home computers. She discussed the database systems through the provisions of the Library Services and Technology Act administered by the state library and the lack of dependable funding from this source. She discussed the frustration of not having remote access for other databases such as Auto Repair and Reference USA. Allowing remote access would make the library more visible to patrons who could use the service anytime it was convenient for them. Subscription services have had to be cut by twenty-one titles and there are certain sets of reference books that can't be considered because of budgetary restrictions. These are, however, basic titles that should be included in most public libraries. The periodical budget was cut and only through contributions from the Friends of the Library and various local businesses has a core collection been maintained.

Ms. Haberman said there was not enough time to address the needs of the children or youth department, audio-visual and Spanish language collection, yet all are vital components of the services and material that the Springfield Library should continue to provide. She quoted the late actor Peter Ustinov who said "Once we are destined to live out our lives in the prison of our minds, our one duty is to furnish it well."

Ms. VanDeWalker said they board understands the council shares the board's concerns about funding the library. The library continues to be one of the bigger draws for the downtown area.

Mr. Coffin distributed application forms and a recent newsletter from the Friends of the Library. Mr. Coffin is the treasurer for the Friends of the Library. Last year the Friends provided about \$9800 to support the library. He said the Friends were established to provide extras to modest improvements to the library, but in recent years, much of the money has gone to offset budgetary cuts. He discussed last year's cut in the periodicals budgets and how the Friends raised money to make up some of those cuts. As volunteers it is disheartening to put effort in and filling potholes rather than doing the things they would like to do, such as providing display cases, children's programs and other extras. He said he hoped council would consider all the alternatives that have

been put before them in previous years, such as a library district or a levy to support this important service.

Mr. Danburg-Wyld discussed some of the impacts that would occur with further cuts to the budget. He understands the council needs to balance the needs of the library with the other pressing needs for the city. The library is the most visible aspect of what the city provides for the people of the city. He discussed his experience with the library as a child and his perspective of the library as a city service. He is concerned with the downward spiral of the library. The library has already faced cuts and reduced hours. With reduced hours, it is more difficult for patrons to come to the library. When patrons have difficulty coming to the library, it is difficult for others to value the library as a resource. He would like to see the library doing more with outreach to children, through the school district, letting them know the library is an available resource for them. Cuts are affecting these programs. The programs in place are of great value to those that use the library. It is important to bring others in and show them the value of the library to all citizens of our city.

Ms. VanDeWalker said Mr. Danburg-Wyld's view is important as someone who has children and has encouraged his children to be part of the library. She agreed that when we shrink the budget, we shrink the hours the library is open, and it is more difficult for people to come to the library. When the board goes to the community to ask for funding, they need to let the public know what they are getting. She said a Library District would be the ideal because it would give the library stable funding. The board would encourage the council to consider a levy to bridge over to a Library District.

Councilor Woodrow said he is concerned whether or not the board had a plan to publicize a levy to the public well enough to get it passed.

Mr. VanDeWalker said the board would like to advocate the levy. The levy would allow them to increase hours and show the public they could offer more services with a levy. She discussed the article in the Register Guard recently that highlighted the many volunteers at the Springfield Library. She agreed that getting the word out is important.

Councilor Woodrow asked how much of a levy would be needed to sustain the library until a district could be formed.

Mr. Russell said he has done extensive research on this topic. He said to make some visible improvements to the library such as more hours of operation and a better book fund, the levy would be eighteen to twenty cents per thousand. To use a levy to bridge to a district, not all improvements would be made by the levy. Some of the improvements would be made as a district was formed.

Councilor Ralston asked about the online encyclopedia costing \$1000 per year. He asked if the library could charge patrons a membership fee for remote access. He asked if it would bring in more patrons.

Ms. VanDeWalker said she talked with a patron at the library who suggested charging patrons for use of the library. She said although this patron may be able to pay a fee, many patrons may not want to pay additional fees in addition to what they pay through property taxes.

Councilor Ralston said it would be a choice for the individual. He said there could be a market to bring in some revenue by selling remote access for \$10 a year.

Ms. Haberman said she has not heard of an outside subscription by the public and many people do not have computer access.

Ms. Peterson referred to Councilor Ralston's question regarding the cost of the online encyclopedia. She said \$1000 for the encyclopedia is a very good price. For \$400 more, the library could have added remote access, but in the current budgetary times, they had to pick and choose. She discussed the option of charging for remote access. Springfield Library card holders do have access. It is a difficult field and is expensive.

Councilor Ralston asked if someone could be a sustaining member and pay the fee for the added benefit.

Mr. Russell said the Library Foundation looks at these types of things. Their focus is trying to improve collections.

Mr. Coffin said as the board looks at money issues, they must remember that many of the people they serve are poor and cannot afford the added cost.

Ms. Haberman said setting up fees in the library sets up a class system in the library. The library has historically been the place where anyone can go no matter what their financial circumstances.

Councilor Ballew said she agreed with Councilor Ralston regarding the fee for special services. Scholarships could be offered for those that could not afford the fee. The city has an imbalance and pays out more than it receives. She encouraged the Library Board to be as creative as they could in regards to funding and costs.

Ms. Peterson said Debi Baker from the University of Oregon was in the audience. Ms. Peterson said Ms. Baker reminded her of the vendor licensing issue which is very complicated and could be an issue. The library could be creative to a point, but in this area there are a lot of complex issues as far as vendor restrictions and liability.

Councilor Woodrow said he is concerned that the manpower to collect the charges may outweigh the income realized.

Councilor Fitch noted other increases in fees the city has had to make recently to recover costs. She said Willamalane is a special district funded by property taxes, but to participate in their classes, citizens must pay a fee to participate. She does not want to see reduced hours in the library. She said all possibilities must be explored for some creative solutions. She does not feel a

levy is the answer right now. A levy is a way to put a bandaid on these problems. Putting forth a levy is a huge undertaking.

Ms. VanDeWalker said the board does not put up brochures and advertisements in the library. Someone suggested to her they put out a donation pamphlet or box.

Councilor Lundberg said she has advocated for a fee structure of some type for a long time. She said the city can't continue to ask taxpayers for additional funds. Any donations or donor program is a great way to raise funds. Patrons need to know the potential in how they could help.

Councilor Ralston asked for the total amount of the levy.

Mr. Russell said it would total about \$350,000.

Councilor Fitch said the success of the book loan program at McKenzie Willamette Hospital is a great example of creativity. She suggested checking with the auxiliary at the hospital to see if they could help.

Mr. Coffin said he understands the city has to choose which items are necessary, but he believes the library is necessary. As long as the library is attached to the city and dependent on city funds, it would always be a low priority. If there was a levy that leads to a Library District, the library would no longer be a funding problem for the city. The priority of the library would then be higher.

Councilor Fitch said until the Metro Plan is changed to correct issues within that plan, she does not want to spend two more years researching a special district only to have it fail. She referred to the recent attempt to form a Fire District. She said she must see support from the community to show they would support the Library District. It is a basic service and a necessity, but in today's tough economic times, it is a difficult choice.

Mr. Coffin agreed that looking at forming a district is a risk.

Mayor Leiken asked about the demographics of the users of the library.

Mr. Russell said they do not have that data at this point, but are hoping their new computer systems will help them with those types of statistics. He said a lot of children, retired people and school teachers use the library.

Ms. Harold works in Children's Services and noted the many events they hold that bring in large groups of children and their families. There is also a high percentage of the immigrant population who come to the library.

Mr. Russell said the library averages nearly one hundred patrons per hour.

Mayor Leiken asked for the charge of the Library Foundation.

Mr. Russell said the charge of the Foundation is to raise funds to improve the library in whatever way is needed. Their short-term goal is to fund and improve the book collection.

Mr. Russell said The Foundation is having a major reception from 5:30-8:00pm on Friday, May 7 in city hall. Congressman Peter DeFazio will be the featured guest. The Foundation is hoping to get commitments from the community to help fund the book collection and all other needs of the library. This is an important event and he encouraged council members to attend.

Mayor Leiken asked about funding for the library through grants.

Mr. Russell said the library receives \$6600 a year for children's outreach through state funding. The State of Oregon ranks 47th in per capital state aid to public libraries. He said one of the difficulties with the grants for libraries, is that it must be for a specific program, not ongoing funding. He discussed the federal grant that started the Hispanic collection. The Foundation applied for a grant through the Oregon Community Foundation for a marketing campaign, but was not funded. He explained some of the reasons they may not have received that funding.

Mayor Leiken discussed the library in Roseburg being funded by a private foundation. He said the city has budget problems, so creative solutions must be found. He said we must be excited and look for ways to fund the library. Our library gives so much to the community. A focus must be found, but he does not believe a levy is the way to go at this time. It is important to get citizens excited about the library. Attitude and excitement will get things going. He said the Foundation and the upcoming reception is a great starting point and opportunity, and people from all over the community should be invited and encouraged to attend. He said the board and the council need to get out and promote this event. He does not want to see the library close because it is an important part of our community. He appreciates the hard work the board has done and the ideas they have brought to council.

Councilor Ballew said she knows it is a difficult task and would like to encourage and support the board.

2. Historic Commission Work Program Joint Meeting

Historic Commission Chair John Tuttle introduced the members of the Historic Commission that were present. Historic Commission members who were present were Michelle Dennis and Roxie Metzler. Ted Corbin and Donald McCormack were absent. Each member gave a brief background of their affiliation with the Historic Commission.

City Planner Kitti Gale presented the staff report on this item. The Springfield Historic Commission is dedicated to planning for and protecting the community's historic resources. The Commission has adopted eight goals to use as a framework for fulfilling this mission. The Historic Commission believes that their goals (Attachment #1 in the agenda packet) are consistent with City Council goals of: Preserving our hometown feel as we grow; Partnering with citizens and other public agencies; and, Participating in a renaissance for Springfield.

The goals function as the Historic Commission's yearly work program. The priorities of each goal are re-evaluated annually to reflect the changing needs of the City of Springfield and the resources of the Historic Commission.

The implementation measures for the Springfield Historic Commission Work Program include activities such as: Historic Site Plan Review Applications (three in 2003); Providing financial and educational support to Washburne Neighborhood Association; Supporting preservation-related education projects in the Springfield School District through Springfield Museum and Willamalane Park's Dorris Ranch; Sponsoring activities during National Historic Preservation Week, which is May 3rd through 9th this year; Updating the Design Guidelines (Attachment #3 in the agenda packet) for the preservation and restoration of Springfield's historic resources; and, review/updating inventories.

Staff support for the city's historic preservation program varies depending upon grant funding. The State Historic Preservation Office (SHPO) requires a minimum of 1:1 grant match. The financial impact to the city to implement this State and Federally required program is approximately 0.2 FTE.

Mr. Tuttle said the Historic Commission has had a full and busy year. They have a lot of energetic commissioners. The largest project was the Springfield Historic Design Guidelines. Previous to this document the commission had the Washburne Guidelines which were created after 1984. With the new materials used today for siding and window, and the interest in remodeling, the issue of vinyl siding and the appropriate use of wood windows opposed to vinyl windows needed to be addressed. These guidelines also included other types of buildings, including religious buildings and educational buildings. The commission has had several applications for remodels and a new residence. This past summer the commission helped with the cost for printing of the brochures for the Washburne Summer Home Tour. The tour was very successful and the proceeds went to furnish street trees for the Washburne Historic District. The commission helped the Springfield Museum with the cost of purchasing a used vault to store photographs and materials, and shelving to store additional archival items. The Washburne neighborhood and the commission made a joint effort to promote Historic Preservation Week in May. He discussed the LTD building on South A Street.

Ms. Metzler discussed Historic Preservation week in May. A window rehabbing workshop is scheduled for May 8 from 1:00-4:00pm with Marvin Glover, a former commission member, as the instructor. The workshop will demonstrate how homeowners can take care of their historic wooden windows. There will also be several window vendors in attendance that would bring window options other than vinyl. She said vinyl windows are heavily promoted, but are not the only option. The commission is working with Willamalane to hold the workshop at Dorris Ranch, possibly in the barn. In conjunction with the Museum, Ms. Metzler has started the oral history project of all of Springfield's living mayors.

Council agreed the workshop idea was very good.

Councilor Fitch asked how the workshop would be advertised.

Ms. Metzler said through the neighborhood association, their newsletter, the Springfield News and Willamalane's program. Perhaps businesses could also put up fliers.

Mr. Tuttle said Ms. Dennis updated the survey for the Washburne Historic District with one of the grants from the State Historic Preservation Office (SHPO).

Ms. Dennis said she had a copy of the survey that was prepared. She said although they received the SHPO grant, the work on the design guidelines was done by volunteers. She thanked Ms. Metzler and Mr. McCormack who put in a number of hours putting the information together. One of the things the commission discovered when updating the design guidelines was that they were working off some dated information from the Historic District nomination materials on the homes in the district. The most recent survey was about twenty-two years old. Because they had overmatched their SHPO grant for the design guidelines, and SHPO had some additional money last year, the commission approached them for additional money so they could update the analysis of current materials on each of the resources in the historic neighborhood. They now have a new page by page analysis with photos of the properties. This information will be used along with the information they already have in place for each of those resources. When property owners approach the commission for design review, the commission will have a summary of information over time of the history of those houses. She said despite some serious technological issues, it was a very fun and exciting project.

Councilor Fitch commended the commission for doing great work.

Councilor Ballew asked what was on the commission's agenda following the Historic Preservation Week in May.

Mr. Tuttle said the commission would be meeting with folks from the Mill Race in June to discuss ways the commission may be able to assist in the Mill Race Project.

Discussion was held regarding recent fires to two homes in the Washburne District.

Ms. Gale noted that the current owners of the Laurel Groves Cemetery are in the process of finding a new owner. The current owners are a non-profit and are dissolving. The commission may do some work on this in the coming year.

Councilor Ralston asked if there was a tour that showed the historic homes.

Mr. Tuttle said sometimes they have a Christmas Home Tour or a Summer Home Tour. The houses on the tour are generally listed on the historic register. When a home is registered on the historic register and qualifies for the base tax rate, the owners are required to open their home for a tour annually. Some homeowners that are not on the register have chosen to open their homes for the tour, which gives more variety to the tour. The tours are scheduled through the Washburne Association and they are publicized.

Councilor Ballew said the Washburne Association puts on the tour as a fund raising event to support their association.

3. Historic Commission Application Interview.

City Planner Kitti Gale presented the staff report on this item. The Historic Commission has two openings on its seven-member commission. The recruitment for these openings began February 11, 2004, and closed March 15, 2004. Three candidates have applied, Karen Glickman, Steve Barnes, and, Tama Tochiara.

Section IX, 3.8 of the Springfield City Council Operating Policies and Procedures, states that the *"...Mayor and Council will hold formal interviews of applicants for positions on the Budget Committee, Historic Commission, and Planning Commission and a recommendation from these bodies is not necessary although they may have a representative present to participate in the interview process. . ."*

Members appointed to the Historic Commission shall be residents, electors, or property owners within Springfield; appointees of other Springfield public agencies such as Willamalane Park & Recreation and the school district; specialists with expertise in fields of architecture, history, architectural history, planning or archaeology, who live within the Metro-area General Plan boundaries.

Ms. Gale noted that the first applicant, Karen Glickman, was applying for the position representing Willamalane.

Council discussed the questions they would ask of the applicants. Council interviewed the following applicants:

1. Karen Glickman
2. Steven Barnes
3. Tama Tochiara

Council discussed the strengths of the applicants. Each applicant was very well qualified. Discussion was held regarding the qualifications and how to interpret the commission by-laws regarding a Willamalane Representative on the commission. Council vote was to appoint Karen Glickman and Tama Tochiara to the Historic Commission at their April 19 Regular Meeting, and to encourage Steven Barnes to reapply for the next opening.

Mayor Leiken excused himself from the council meeting and Council President Tammy Fitch presided over the rest of the meeting.

4. Dispute with Comcast Concerning Franchise Fee Payments.

Technical Services Manager Len Goodwin presented the staff report on this item. Much of the history of this dispute is summarized in the memorandum of February 11, 2004 (Attachment D in the agenda packet). Staff of the City of Springfield, the City of Eugene and Lane County are unanimously of the belief that Comcast will not voluntarily agree to pay any of the additional sums found to be due in the report of the independent examiner (Attachment A in the agenda packet).

Staff believes that those sums are rightfully due under the terms of the franchise. In the case of Springfield that amounts to a sum of \$26,154. A preliminary estimate of the expenses associated with arbitration suggests that in total, the three jurisdictions would spend approximately \$50,000 (which might be recoverable from Comcast in the event of a favorable award). Those expenses would be apportioned among the three jurisdictions on the basis of the proportionate shares of Comcast revenue received by each jurisdiction. No assurance can be given as to the probability of success. Mr. Goodwin said he was advised that a number of other jurisdictions, including Sacramento, California and Los Angeles, have taken, or are contemplating similar action.

Under the existing franchises, MPC serves as a cable commission for the purposes of managing relationships with the franchisee. On March 10, 2004, the Lane County Board of County Commissioners approved a board order directing that MPC be asked to demand arbitration under the terms of the franchise. At present the Eugene City Council will take up the matter on April 21, 2004. That matter is, at present, scheduled to be on the agenda for the MPC meeting to be held on May 13, 2004. The Springfield representatives, Mayor Leiken and Councilor Ballew, will take action at that time regarding the Springfield vote.

This is a valid dispute, but part of the information is missing. In the metropolitan area these franchise fees are based on revenue, but in other areas they are not. Mr. Goodwin discussed the other cities that are having similar disputes. With the difficulty they have faced in getting the information from Comcast, it would seem the only opportunity is to go forth and use the procedure in the franchise to resolve the dispute. He said the city doesn't know what the contract is between the advertising agency and Comcast. It is his understanding that other jurisdictions have gotten that information, but Springfield has not been able to obtain that information. The city does not know if the advertising agency that Comcast uses is a wholly owned subsidiary of the operating branch of Comcast or someone completely independent. Those answers might make a difference in what might be done regarding a negotiated solution. At this point the city only has a clear indication from our examiner that the revenues are not being properly reported. It appears the only way to get a resolution is using the procedures in the franchise, which is arbitration.

Councilor Woodrow asked if the contract with Comcast, Attachment E included in the agenda packet, was still in affect. That is correct. He understands the principal with the advertising commission fee. Whatever form of advertising Comcast uses, the advertising firm would take a fifteen percent discount and Comcast would never see that. The definition of gross annual revenues means any and all compensation in whatever form. Ordinance No. 11, Section 10 is related to the gross annual revenues as defined. He said it may be time the advertising agencies took their fifteen percent out of that bill, so Comcast is not hit with it, because that is not fair. According to the contract, however, it is included.

Councilor Ralston asked why Comcast wouldn't give the city the information they requested.

Councilor Woodrow said it is often a given that the advertising agency will take the fifteen percent.

Councilor Ralston said if Comcast didn't have something to hide, they should give the information.

Councilor Lundberg asked if Sanford Inouye, Director of Franchising and Government Affairs for Comcast, who was present in the audience, could respond to that question.

Mr. Inouye discussed the review period from 1999 and 2002. He said that at that time other companies were involved; therefore it is difficult for Comcast to find that information. They are still looking.

Mr. Goodwin said he was not aware they were looking for anything.

Councilor Rakton said he is surprised their record keeping was not better maintained.

Mr. Inouye said part of it was due to the transition from TCI to AT&T to Comcast and the different record keeping of each company.

Councilor Fitch asked if the outcome of mediation going on in the cities Mr. Goodwin mentioned would have an affect on the outcome for Springfield.

Mr. Goodwin said it should not affect the arbitrator's decision. As a practical matter, if a respected arbitrator comes to one conclusion, a subsequent arbitrator would take note of that, but may or may not take it under consideration. As a legal matter it doesn't have an affect.

Councilor Lundberg said there could be different fee structures within the state with different arbitrators. Mr. Goodwin confirmed that.

Councilor Fitch asked how much Springfield staff time and LCOG staff time this would take if we went forward with arbitration.

Mr. Goodwin said in terms of both staffs it would not be significant. If arbitration did occur, the three jurisdictions would hire one attorney to represent all three and the proceedings would be consolidated. It is not as extensive a discovery involved in litigation. There would be a number of person hours by Mr. Goodwin and the LCOG staff, but it would not be a significant impact on their regular work load.

Councilor Woodrow asked if it would cost more that the amount they would receive.

Mr. Goodwin said it is difficult to say and he gave some estimates if we lost, which are included in the staff report. The city's portion of that cost would be less than \$20,000. If the three jurisdictions won the lawsuit, the city would seek attorney fees from Comcast and the franchise does provide for those. It would solve the problem for the next three years until the franchise contract expires.

Councilor Ballew asked if Mr. Goodwin felt that according to the city's ordinance, Comcast had not complied and the city was on safe ground seeking enforcement of the ordinance.

Mr. Goodwin said there is a difference between gross revenue as defined in our ordinance and gross revenue as reported in accordance with generally accepted accounting principals. The latter

is not what the city has in the ordinance. He does not feel Comcast's argument is valid. He would hope the city would succeed.

Councilor Fitch asked how long this ordinance has been on the record.

Mr. Goodwin said it has been in existence since 1991 and was not challenged until 1998. This is the first examination the city has done of Comcast's franchise fee revenues other than a couple of checks on address matching to confirm Comcast was including the right territory. The city does not know if this situation pre-dated 1999.

Councilor Lundberg asked if previous contracts with previous cable companies included having them pay the franchise fee based on the additional accounting for advertising.

Mr. Goodwin said because the city has not done an examination of revenues, they cannot say for sure. The consensus of those working on these particular franchises currently and in the past, as well as other franchises with TCI, was that they were expected to be included.

Councilor Lundberg said it is possible that no other cable company in the past paid those fees. Mr. Goodwin agreed. Councilor Lundberg said it would be a benefit for the city to have more clarity in future ordinances as to what fees are included.

Mr. Kelly said the MPC would make the decision regarding going forward with litigation. The MPC representatives, including Mayor Leiken and Councilor Ballew, would be voting on this and the decision would be determined by consensus. Councilors could give input to Springfield's MPC representatives, but the representatives would make the final decision. Each of the three agencies will have a vote.

Councilor Lundberg said she would not be in favor of pursuing this because there is not a lot of clarity. For future reference we need that clarity. She is not supportive of backtracking and trying to assess it now.

Councilor Woodrow said he agrees and would not support going forward based on Councilor Lundberg's comment about not knowing if the fee was paid in the past.

Councilor Ralston said he feels the city has a strong position and should argue the case.

Councilor Fitch said the Mayor does plan to attend the MPC Meeting in which this item will be discussed. Councilor Fitch agrees with Councilor Woodrow and Lundberg because there is no past record of these fees. She said with our budget it is important to bring in revenue; however, if the expenditure is more or potentially more than the revenue she has a concern. She asked if we have a deadline. Mr. Goodwin said we do not.

Councilor Woodrow asked if this franchise fee would be renewed in three years. Mr. Goodwin confirmed that it would.

Councilor Fitch said a compromise could be an amendment to the agreement now, rather than using attorney fees to take this to litigation.

Councilor Ballew said if we make ordinances we need to enforce them. She agrees we should work for cost recovery, but the city also needs to govern by the ordinances they put in place.

Councilor Woodrow agreed with Councilor Fitch that the amendment could be a viable compromise.

The meeting was adjourned at 7:44 pm.

Minutes Recorder – Amy Sowa

Sidney W. Leiken
Mayor

Attest:

Amy Sowa
City Recorder